

## **EXHIBIT 5**

### **Preserved Causes of Action<sup>1</sup>**

Section 4.13 of the Plan provides that except as otherwise provided therein, any Causes of Action accruing to or held by the Estates prior to the Plan Effective Date shall vest in the Debtors on the Plan Effective Date, including those Causes of Action identified in the Plan Supplement, if any, and that all Causes of Action not expressly released or waived in this Plan or the Confirmation Order shall survive confirmation of the Plan, and the assertion of Causes of Action shall not be barred or limited by any estoppel doctrine. The Plan Administrator may pursue those Causes of Action as deemed appropriate, in his name or that of the Debtors. None of the Plan, the Disclosure Statement or this Plan Supplement shall set forth an exhaustive list of all Causes of Action preserved under the Plan and vesting in the Debtors, and the failure to identify or list any particular Cause of Action herein or therein shall not constitute a waiver or release.

No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors will not pursue any and all available Causes of Action against it. The Plan Administrator, on behalf of the Debtors, expressly reserves all rights to prosecute any and all Causes of Action against any person or entity, except as otherwise expressly provided in the Plan. No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to any causes of action not expressly released or waived in the Plan or Confirmation Order upon, after, or as a consequence of the Confirmation or Consummation. The Debtors reserve and shall retain such Causes of Action notwithstanding the rejection or repudiation of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any person or entity shall vest in the Reorganized Debtors, except as otherwise expressly provided in the Plan.

Notwithstanding, and without limiting the generality of, Section 4.13 of the Plan, the following lists specific types of Causes of Actions expressly preserved by the Debtors, subject to the terms of the Plan and the information provided in this Exhibit 5. For the avoidance of doubt, the specific types of Causes of Action listed below are indicative, but are in no way exclusive, of the causes of action retained in connection with the Plan. The Debtors reserve all rights to amend, revise, or supplement this Exhibit 5 to the Plan Supplement, and any of the documents and designations contained herein, at any time before the Plan Effective Date, or any such other date as may be provided for by the Plan or by order of the Court.

- Claims Relating to Deposits, Adequate Assurance Postings and other Collateral Postings: Unless otherwise released by the Plan, the Debtors expressly reserve all Causes of Action based in whole or in part upon any and all postings of a security deposit, adequate assurance payment, or any other type of deposit or collateral,

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<sup>1</sup> The following is a non-exclusive list of potential claims and causes of action to be preserved under the Plan. Nothing herein shall be deemed an admission, denial, or waiver of any claims, demands, rights, or causes of action that any of the Debtors or their Estates may hold against any person or entity.

regardless of whether such posting of security deposit, adequate assurance payment, or other type of deposit or collateral is specifically identified herein.

- Claims Relating to Liens: Unless otherwise released by the Plan, the Debtors expressly reserve all Causes of Action based in whole or in part upon any and all liens regardless of whether such lien is specifically identified herein.
- Claims Related to Contracts and Leases: Unless otherwise released by the Plan, the Debtors expressly reserve the Causes of Action, based in whole or in part upon any and all contracts and leases to which any Debtor is a party or pursuant to which any Debtor has any rights whatsoever. The claims and Causes of Actions reserved include Causes of Action against vendors, suppliers of goods or services, or any other parties: (a) for overpayments, back charges, duplicate payments, improper holdbacks, deposits, warranties, guarantees, indemnities, recoupment, or setoff; (b) for wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (c) for failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtors before the assumption or rejection, if applicable, of such contracts; (d) for payments, deposits, holdbacks, reserves, or other amounts owed by any creditor, utility, supplier, vendor, insurer, surety, factor, lender, bondholder, lessor, or other party; (e) for any liens, including mechanic's, artisan's, materialmen's, possessory, or statutory liens held by any one or more of the Debtors; (f) counter-claims and defenses related to any contractual obligations; (g) any turnover actions arising under section 542 or 543 of the Bankruptcy Code; and (h) any accumulated service credits, both those that may apply to future vendor invoices and those from which the Debtors may be entitled to receive a refund.
- Patient/Resident/Payor Obligations. Unless otherwise released by the Plan, the Debtors expressly reserve all Causes of Action against or related to all patients or residents or third party or governmental payors that owe or may in the future owe money to the Debtors for any reason, including, without limitation, for services rendered or care administered by the Debtors.
- Claims Related to Insurance Policies. Unless otherwise released by the Plan, the Debtors expressly reserve all Causes of Action based in whole or in part upon any and all insurance contracts and insurance policies to which any Debtor is a party or pursuant to which any Debtor has any rights whatsoever, regardless of whether such contract or policy is specifically identified herein, including Causes of Action against insurance carriers, reinsurance carriers, insurance brokers, underwriters, occurrence carriers, or surety bond issuers relating to coverage, indemnity, contribution, reimbursement, or any other matters.
- Claims, Defenses, Cross-Claims and Counter-Claims Related to Litigation and Potential Litigation: Unless otherwise released by the Plan, the Debtors expressly reserve all Causes of Action against or related to all entities that are party to or that may in the future become party to litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal or judicial or non-judicial, including those litigation, arbitration, or other types of adversarial

proceedings or dispute resolution proceedings, regardless of whether such entity is specifically identified in the Plan, this Plan Supplement, or any amendments thereto. Without limiting the generality of the foregoing, the Debtors' expressly reserve all Causes of Action against the following entities:

- Parties to *The Brightonian Nursing Home, Inc., et al v. Zucker, et al*, Index No. 908140-17 (Sup. Ct. Albany County)
- Parties to *The Brightonian Nursing Home, Inc., et al. v. Zucker, et al.*, Index No. 903526-18 (Sup. Ct. Albany County)
- Parties to *Dry Harbor Nursing Home, et al v. Zucker, et al*, Index No. 2146/2016 (Sup. Ct. Albany County)
- Parties to *Dry Harbor Nursing Home, et al. v. Zucker, et al.*, Index No. 905824-18 (Sup. Ct. Albany County)
- Claims Related to Tax Refunds or Other Governmental Obligations: Unless otherwise released by the Plan, the Debtors expressly reserve all Causes of Action against or related to all Governmental Units or other entities that owe or that may in the future owe money related to tax refunds or other governmental obligations to the Debtors or Reorganized Debtors, regardless of whether such Governmental Unit or other entity is specifically identified herein. Furthermore, the Debtors expressly reserve all Causes of Action against or related to all Governmental Units or other entities who assert or may assert that the Debtors owe taxes or other amounts to them.
- Claims Related to Other Bankruptcy Cases. Unless otherwise released by the Plan, the Debtors expressly reserve all Causes of Action against or related to any entity that is or may in the future become a debtor in a case under title 11 of the United States Code, regardless of whether such Entity is specifically identified in the Plan, this Plan Supplement, or any amendments thereto.
- Claims Related to Intellectual Property and Other Business Torts: Unless otherwise released by the Plan, the Debtors expressly reserve any Causes of Action for unfair competition, licensing or licensing agreements, interference with contract or potential business advantage, conversion, infringement of intellectual property, or other business tort claims. Nothing in the Plan shall impair, enlarge, or in any way alter the equitable and legal rights, obligations, and defenses of the Debtors regarding their intellectual property rights, and all rights with respect thereto are expressly reserved. Notwithstanding the foregoing, any action or inaction by the Debtors with respect to intellectual property rights shall not be used, invoked, or applied by any entity in any proceeding to serve as the basis to enlarge, diminish, or in any way alter or affect equitable and legal rights, obligations, and defenses including, without limitation, through the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, other estoppels (judicial, equitable, or otherwise), naked license, unreasonable delay in asserting rights, adequate remedy at law, or laches, in any dispute regarding the intellectual property rights of the Debtors or the Reorganized Debtors.

- Claims Related to Environmental Matters: Unless otherwise released by the Plan, the Debtors expressly reserve any and all Causes of Action against or related to environmental matters, including any Causes of Action arising out of environmental or contaminant exposure matters against landlords, lessors, environmental consultants, environmental agencies or suppliers of environmental services or goods.
- Avoidance Actions: Any and all claims or causes of action to recover avoidable prepetition transfers, including preferential transfers, fraudulent conveyances, or fraudulent transfers, whether or not made to or for the benefit of the transferees identified in the Debtors' respective statements of financial affairs, filed with the Court on October 16, 2019 (as may be amended from time to time), or beneficiaries of said conveyances or transfers, including those against the following persons:
  - 777 Equipment Finance
  - Airgas USA, LLC
  - All State Fire & Security
  - AmTrust North America, Inc.
  - Avante
  - Axis Surplus Insurance Co.
  - Bonadio & Co LLP
  - Brian Parisi Copier Systems, Inc.
  - Clinical Staffing Resources
  - CNH Finance, L.P.
  - Colonial Life
  - Crown Energy Services, Inc.
  - DDK
  - Department of Public Works
  - Erie County Water Authority
  - Estate of Martha Morrison
  - Favorite Healthcare Staffing, Inc.
  - Feldman, Kieffer & Herman, LLP
  - Fly Advanced
  - First Insurance Funding Corp.
  - Grandison Management Inc.
  - Grandview Brokerage
  - Guthrie Clinic Ltd.
  - Harbor Linen
  - Harter, Secrest & Emery LLP
  - Humboldt House Nursing and Rehab
  - Instantwhip
  - Integra Scripts
  - John Verrati
  - Kaleida Health
  - Kaufman Borgeest & Ryan LLP
  - Key Equipment Finance
  - Latina Boulevard Foods, LLC
  - Mary Deemer
  - Medical Staffing Network

- Modern Corporation
- National Fuel
- NYSEG
- O'Connor Mechanical Corp.
- Paterson Healthcare Interior Design
- Solamed 02, LLC
- Secure Care Products LLC
- Specialty RX Inc.
- Specialty RX NY Inc.
- Toyota Financial Services
- Town of Erwin
- U.S. Bank
- Verizon
- Windstream
- Time Warner
- Trustaff Travel Nurses, LLC
- Village of East Aurora